

Bruce F. Fain
Murphy, Kirkpatrick & Fain, P.L.L.P.
208 North Broadway, Suite 208
P.O. Box 429
Billings, MT 59103-0429
Phone: (406) 256-9700
Fax: (406) 256-9755
E-mail: bruce@murphkirk.com
I.D. Number: 3377

Attorneys for Plaintiff
Auto Auction of Montana

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re:

INCREDIBLE AUTO SALES, LLC,

Debtor.

CASE NO. 06-60855

**OBJECTION TO DEBTOR'S REQUEST
FOR SURCHARGE**

NOTICE OF HEARING

Date: March 20, 2007

Time: 9:00 a.m.

**Location: 5th Floor, Fed.Bldg.
Billings, Montana**

- - - - -

AUTO AUCTION ASSOCIATES OF MONTANA, INC., d/b/a AUTO AUCTION OF MONTANA a/k/a AUTO AUCTION OF BILLINGS ("Auto Auction"), through its counsel, submits the following Objection to Debtor's Request for Surcharge.

The Debtor has requested that this Court surcharge Auto

Auction for repairs allegedly done to a Sorrento. The Court should deny the request because: the Debtor waived all claims in that a judgment was entered against it in a separate adversary proceeding which determined the Debtor had no interest in the "vehicles or proceeds" of the vehicles, which judgment is also *res judicata* on this matter and which also bars this claim under collateral estoppel; 11 U.S.C. § 506(c) only applies to "secured claims," and a reclamation claim is not a "secured claim"; the Debtor has waived and is barred by judicial estoppel from making this claim as it has always asserted that the auction claimants were unsecured and there is no provision for surcharge to an unsecured claim; the Court has not yet ruled on the reclamation claim, so the request is clearly premature; and, the request has been made without explaining or providing any factual basis for the claim.

WHEREFORE, Auto Auction respectfully requests that the Court issue an order which:

1. Denies the Debtor's request for a surcharge; and
2. Grants such other and further relief as the Court deems just an proper.

DATED this 5th day of March, 2007.

Murphy, Kirkpatrick & Fain, P.L.L.P.
208 North Broadway, Suite 208
P.O. Box 429
Billings, MT 59103-0429

By: /S/ Bruce F. Fain
Bruce F. Fain
Attorneys for Plaintiff Auto
Auction of Montana

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 5th day of March, 2007, a copy of the **OBJECTION TO DEBTOR'S REQUEST FOR SURCHARGE AND NOTICE OF HEARING** was served upon counsel of record by the following method:

1-5, 7-19 CM/ECF

1. William L. Needler
William L. Needler and Associates
555 Skokie Blvd. Ste. 500
Northbrook, IL 60062
williamlneedler@aol.com
2. Charles W. Hingle
Shane P. Coleman
P.O. Box 639
Billings, MT 59103-0639
chingle@hollandhart.com
3. Neal G. Jensen
U.S. Trustee
Liberty Center, Ste. 204
301 Central Ave.
P.O. Box 3509
Great Falls, MT 59401
Neal.G.Jensen@usdoj.gov
4. James A. Patten
Patten, Peterman, Bekkedahl
& Green, PLLC
2817 2nd Avenue North, #300
Billings, MT 59101
japatten@ppbqlaw.com
5. Christopher Birkle
P.O. Box 1415
Billings, MT 59103
lovellaw@hotmail.com
6. Ken Cornelison
Incredible Auto Sales, LLC
1832 King Avenue West
Billings, MT 59102

7. Alan C. Bryan
P.O. Box 2529
Billings, MT 59103-2529
abrayn@crowleylaw.com
8. Shane P. Coleman
Holland & Hart
P.O. Box 639
Billings, MT 59103-0639
spcoleman@hollandhart.com
9. Gregory W. Duncan
2687 Airport Road, Ste. A
Helena, MT 59601
gd@mt.net
10. Jeffrey A. Hunnes
Guthal, Hunnes, Reuss, Thompson, PC
P.O. Box 1977
Billings, MT 59103-1977
jhunnes@ghrtlawfirm.com
11. Doug James
Moulton, Bellingham, Longo & Mather, PC
P.O. Box 2559
Billings, MT 59103
james@moultonlawfirm.com
12. Steven M. Johnson
Church, Harris, Johnson & Williams, PC
P.O. Box 1645
Great Falls, MT 59403
sjohnson@chjw.com
13. Daniel P. McKay
Office of the U.S. Trustee
Liberty Center Suite 204
301 Central Ave.
Great Falls, MT 59401
Dan.P.McKay@usdoj.gov
14. Christian T. Nygren
Milodragovich, Dale, Steinbrenner & Binney, PC
P.O. Box 4947
Missoula, MT 59806-4947
nygren@bigskylawyers.com

15. Clarke B. Rice
P.O. Box 23563
Billings, MT 59104
clarkerice@imt.net
16. Jeffrey N. Rich
Kirkpatrick & Lockhart Nicholson Graham LLP
599 Lexington Avenue
New York, NY 10022
jrich@klnq.com
17. Ross P. Richardson
P.O. Box 399
Butte, MT 59701
rossrichardson@gwest.net
18. Jason S. Ritchie
Holland & Hart
401 N 31st Street Suite 1500
Billings, MT 59101
jritchie@hollandhart.com
19. Lisa Swan Semansky
Semansky Law Office
P.O. Box 3267
Great Falls, MT 59403-3267
semansky@bresnan.net

/S/ Bruce F. Fain
